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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/809,910

03/26/2004

Manabu Ohnishi

60188-823

7704

7590

11/02/2005

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EXAMINER

HO, TU TU V

ART UNIT

PAPER NUMBER

2818

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/809,910

**Applicant(s)**

OHNISHI ET AL.

**Examiner**

Tu-Tu Ho

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-36 is/are pending in the application.
- 4a) Of the above claim(s) 15-26 and 33-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

1. Applicant's Amendment filed 10/20/2005 has been reviewed and placed of record in the file.

### *Formal Matters*

2. This application is in condition for allowance except for the following formal matters:  
This application is in condition for allowance except for the presence of claims 15-26 and 33-36 to a non-elected species. Specifically, new claims 15-26 and 33-36 directed to a species that is independent or distinct from the invention originally claimed for the following reasons:

New claims 15-26 and 33-36, considered Species II, III, and IV, are directed to the embodiments of Figs. 4, 6, and 7. Claims 10-14 and 27-32, considered Species I, are directed to the embodiments of Figs. 8-9.

- 2.1. Had Applicant presented claims 10-36 as originally filed, the claims would have been restricted as follow:

- 2.1.1. The claims are directed to the following patently distinct species of the claimed invention:

**Species I.** Illustrated in Figures 8-9 and as best as can be understood described in claims 10-14 and 27-32

**Species II.** Illustrated in Figure 4 and as best as can be understood described in claims 15-19 and 33-36

**Species III.** Illustrated in Figure 6 and as best as can be understood described in claims 20-23

**Species IV.** Illustrated in Figure 7 and as best as can be understood described in claims 24-26

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2.1.2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2.1.3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification and their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2.1.4. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

2.2. Since applicant has received an action on the merits for the originally presented species, Species I, claims 10-14 and 27-32, has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 15-26 and 33-36, or Species II,

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III, and IV, are withdrawn from consideration as being directed to a non-elected species, there being no allowable generic or linking claim. See 37 CFR 1.142(b) and MPEP § 821.03.

***Allowable Subject Matter***

3. Claims 10-14 and 27-32 are allowable over the prior art of record. The allowable subject matter was indicated in the office action mailed 07/20/2005.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

4. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu-Tu Ho whose telephone number is (571) 272-1778. The examiner can normally be reached on 6:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID NELMS can be reached on (571) 272-1787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tu-Tu Ho  
October 28, 2005